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OFFICE OF PETITIONS

In re Application of :
Joseph E. Schroeder :
Application No. 10/677,443 : DECISION ON PETITION
Filed: October 2, 2003 : UNDER 37 CFR 1.181
Attorney Docket No. NOOT 8500U1 :

This is a decision on the petition filed October 5, 2004, under 37 CFR 1.181 requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is dismissed.

Any request for reconsideration should be filed within two (2) months from the mailing date of this decision. Note 37 CFR 1.181(f).

This application was held abandoned for failure to timely reply to the Office action (Notice) mailed March 29, 2004, which set a shortened statutory period for reply of three (3) months. Accordingly, the application became abandoned on June 29, 2004.

Petitioner asserts that failure to timely reply was due to nonreceipt of the Notice of March 29, 2004.

The Office follows the guidelines set forth in MPEP § 711.03(c) (see also "Withdrawing the Holding of Abandonment When Notices Are Not Received," 1156 *Official Gazette* 53 (November 16, 1993), which sets forth that, in the absence of any irregularity in the mailing of the Notice, there is a strong presumption that the Notice was properly mailed to practitioner at the address of record.

A review of the written record indicates no irregularity in the mailing of the Notice and is presumed to have been properly mailed to the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. In this regard, the showing required to establish the failure to receive the Notice must consist of a statement from petitioner stating that the Notice was not received and attesting to the fact that a search of the file jacket and docket records

indicates that the Notice was not received. A copy of the docket record where the nonreceived Notice would have been entered had it been received must be attached to and referenced in petitioner's statement.

Petitioner attests to the fact that he has "personally reviewed the file jacket and could find no office action or any reference of the Notice of March 29, 2004. In support of nonreceipt of the Notice of March 29, 2004, petitioner has submitted a copy of the computer docket report showing all patent-related matters in the firm that required attention on June 29, 2004.

While petitioner has submitted a copy of the firm's database showing receipt of all items docketed for June 29, 2004, the showing is incomplete in that petitioner has not submitted a copy of the referenced file jacket which should show entries of all actions from the USPTO. The evidence required to establish nonreceipt should include a copy of all records maintained by the firm which would corroborate nonreceipt of the action at issue.

For the reasons stated above, the petition to withdraw the holding of abandonment cannot be granted at this time.

If petitioner cannot provide evidence of the nature required above or simply does not wish to, petitioner may wish to consider filing a petition under the unintentional provisions of 37 CFR 1.137(b). Public Law 97-247, which revised patent and trademark fees, provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable." See 37 CFR 1.137(b) in effect as of December 1, 1997. *Note Changes to Patent Practice and Procedure; Final Rule Notice*, 62 Fed. Reg. 53131 (October 10, 1997), 1203 Off. Gaz. Patent Office 63 (October 21, 1997). An "unintentional" petition must be accompanied by the required petition fee.

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement of unintentional delay is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

A copy of the Notices mailed March 29, 2004 accompanies this decision.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Service Window
 Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By fax: (571) 273-8300
 ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.



Karen Creasy
Petitions Examiner
Office of Petitions

ATTACHMENT: Copy of Notices mailed January 18, 2005